

Observations on SB 1224

On Behalf of

The Virginia Association of Realtors

And

The Northern Virginia Apartment Association

Virginians are protective of the private property rights of its citizens.

The effect of this legislation would be to mandate that every residential property owner in Virginia accept certain statutory “lawful sources of income”.

The legislation would trump the business judgment and financial criteria of the residential property owner used by that property owner to determine whether a tenant would be eligible to rent any single family residence or apartment in Virginia.

The legislation would provide that the residential property owner’s failure to comply would be a fair housing violation under Virginia law. Penalties for a fair housing violation under Virginia law are as follows:

- The court or jury may award such other relief to the aggrieved person, as the court deems appropriate, including compensatory damages, and punitive damages without limitation otherwise imposed by state law.
- Assess a civil penalty against the respondent (i) in an amount not exceeding \$50,000 for a first violation; and (ii) in an amount not exceeding \$100,000 for any subsequent violation, with each day being a separate violation.
- Award the prevailing party reasonable attorney's fees and costs.

The consequences of being accused of a fair housing violation are significant. The Virginia Fair Housing Office investigates a complaint alleging a fair housing violation, which generally takes about a year. The Real Estate Board or the Fair Housing Board sets an administrative hearing on the complaint. If the applicable Board determines “reasonable cause”, the Attorney General is required to bring legal action against the named fair housing respondents. The complainant(s) can themselves file a separate civil lawsuit in court in addition to the action of the Attorney General.

Fair housing respondents include a single family homeowner who cannot sell their home and decide to rent it; the Realtor who lists that property for rent; and the property manager who helps manage the property for the homeowner. Fair housing respondents also include apartment owners and apartment managers. In addition, fair housing respondents include homebuilders or a manufactured home owner who sets up a rent-to-own program for buyers who do not have sufficient down-payment money to qualify to buy their home. Each of these buckets of respondents would be required to correctly

administer the statutorily mandated "lawful sources of income" or be in violation of the fair housing law.

Every professional real estate organization in this room supports compliance with fair housing laws; that is not the issue. The issue is whether the General Assembly should expand the Virginia Fair Housing Law and mandate the financial criteria by which a residential property owner selects his or her tenants.

As the members of the Virginia Housing Commission know well, the professional real estate organizations in Virginia work hard to find legislative compromises. On SB 1224, the professional real property organizations are opposed to this legislation and see no potential compromise.

It is important to look at SB 1224 for a moment and walk through the categories of "sources of income" that would be mandated by this legislation. Put yourself in this situation: you have 1 rental house, you try to rent it yourself, or you hire your sister who is a local Realtor. If you or your sister fail to correctly administer this law, you each would violate the Virginia Fair Housing Law under this legislation.

Here are definitions in existing law for the various categories of mandated "sources of income" listed in the legislation starting on line 55 of the bill.

- Section 63.2-100:

"Public assistance" means Temporary Assistance for Needy Families (TANF); auxiliary grants to the aged, blind and disabled; medical assistance; energy assistance; food stamps; employment services; child care; and general relief.

- Section 20-108.2:

C. For purposes of this section, "gross income" means all income from all sources, and shall include, but not be limited to, income from salaries, wages, commissions, royalties, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits except as listed below, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, veterans' benefits, spousal support, rental income, gifts, prizes or awards.

If a parent's gross income includes disability insurance benefits, it shall also include any amounts paid to or for the child who is the subject of the order and derived by the child from the parent's entitlement to disability insurance benefits. To the extent that such derivative benefits are included in a parent's gross income, that parent shall be entitled to a credit against his or her ongoing basic child support obligation for any such amounts, and, if the amount of the credit exceeds the parent's basic child support obligations, the credit may be used to reduce arrearages.

Gross income shall be subject to deduction of reasonable business expenses for persons with income from self-employment, a partnership, or a closely held business. "Gross income" shall not include:

1. Benefits from public assistance and social services programs as defined in § 63.2-100;
2. Federal supplemental security income benefits;

3. Child support received; or

4. Income received by the payor from secondary employment income not previously included in "gross income," where the payor obtained the income to discharge a child support arrearage established by a court or administrative order and the payor is paying the arrearage pursuant to the order. "Secondary employment income" includes but is not limited to income from an additional job, from self-employment, or from overtime employment. The cessation of such secondary income upon the payment of the arrearage shall not be the basis for a material change in circumstances upon which a modification of child support may be based.

For purposes of this subsection: (i) spousal support received shall be included in gross income and spousal support paid shall be deducted from gross income when paid pursuant to an order or written agreement and (ii) one-half of any self-employment tax paid shall be deducted from gross income.

Where there is an existing court or administrative order or written agreement relating to the child or children of a party to the proceeding, who are not the child or children who are the subject of the present proceeding, then there is a presumption that there shall be deducted from the gross income of the party subject to such order or written agreement, the amount that the party is actually paying for the support of a child or children pursuant to such order or agreement.

Where a party to the proceeding has a natural or adopted child or children in the party's household or primary physical custody, and the child or children are not the subject of the present proceeding, there is a presumption that there shall be deducted from the gross income of that party the amount as shown on the Schedule of Monthly Basic Child Support Obligations contained in subsection B that represents that party's support obligation based solely on that party's income as being the total income available for the natural or adopted child or children in the party's household or primary physical custody, who are not the subject of the present proceeding. Provided, however, that the existence of a party's financial responsibility for such a child or children shall not of itself constitute a material change in circumstances for modifying a previous order of child support in any modification proceeding. Any adjustment to gross income under this subsection shall not create or reduce a support obligation to an amount which seriously impairs the custodial parent's ability to maintain minimal adequate housing and provide other basic necessities for the child, as determined by the court.

In cases in which retroactive liability for support is being determined, the court or administrative agency may use the gross monthly income of the parties averaged over the period of retroactivity.

- Federal Supplemental Security Income Benefits:

Supplemental Security Income (SSI) is a Federal income supplement program funded by general tax revenues (*not* Social Security taxes) which is designed to help aged, blind, and disabled people, who have little or no income; and provide cash to meet basic needs for food, clothing, and shelter

- Child Support:

It is not clear why child support is not already covered in the definition of “gross income” in Section 20-108.2?

This raises a question about whether a landlord can determine the reliability of the mandated “sources of income” without committing a fair housing violation? For example, does “child support” as one category of “lawful source of income” means that the landlord is mandated to include the last 3 years of delinquent child support from a “deadbeat father” when the likelihood of collecting that back child support is uncertain or current child support if the “deadbeat father” is in jail?

- Any Federal, State or Local Housing Assistance:

The primary tenant based housing assistance is HUD Section 8 Housing Choice Vouchers. The federal laws and regulations are substantial for this program, and the federal law trumps the state landlord tenant laws.

So, a property owner, property manager and Realtor would be mandated by this legislation to comply with these additional federal laws regardless of whether they chose to participate in the HUD Section 8 Program. Sometimes, interpretations of federal laws are decided by the federal courts, as compared to Virginia landlord tenant disputes which are decided usually in general district courts, often without attorneys.

Every property owner, property manager and Realtor would be required to have a good working knowledge and properly administer the HUD Section 8 Program. A mistake in administering the HUD Section 8 Program Regulations would be a fair housing violation under Virginia law.

In addition, the Realtor and/or the property manager would likely be liable to their owner-clients for negligence and breach of the property management contracts for failure to properly administer the HUD Section 8 Program.

We have two more speakers this morning; Andrew Chisolm who is Director of the Mid-Atlantic Region for Drucker & Falk, a company that manages more than 30,000 apartments; and Mike Toalson, who needs no introduction to this Commission. At the conclusion of their remarks, I would be happy to answer any questions anyone on the Commission may have.

Thank you.

Chip Dicks
FutureLaw, LLC
1802 Bayberry Court, Suite 403
Richmond, Virginia 23226
804-225-5507 (Direct)
chipdicks@futurelaw.net
www/futurelaw.net